1349.

SUPREME COURT OF THE UNITED STATES.

No. 171.

WILLIAM CHRISTY, PLAINTIFF IN ERROR,

vs.

HIRAM HENLEY.

ERROR FROM DISTRICT COURT, UNITED STATES, FOR THE DISTRICT OF TEXAS.

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[GIDEON, Print.]

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

Pleas held before the honorable John C. Watrous, judge of the district court of the United States, for the district aforesaid, at a term of said court begun and held at the court-house of said court, in the city of Galveston, and State of Texas, on the second Monday, being the 12th day of May, A. D. 1851, and seventy-fifth of American independence.

WILLIAM CHRISTY, plaintiff,
vs.
HIRAM HENLEY, defendant.

Trespass.

Be it remembered, that heretofore, to wit, on the 10th day of July, A. D. 1849, the plaintiff aforesaid, by his attorney, Robert Hughes, came into the clerk's office of the said district court aforesaid, and filed his petition against the defendant, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Texas.

District court, December term, 1849.

To the honorable John C. Watrous, judge of the said district.

The petition of William Christy, a citizen and resident of the city of New Orleans, and State of Louisiana, plaintiff, against Hiram Henley, a citizen and resident of the county of Harrison, and State of Texas, defendant; and thereupon your petitioner, humbly complaining, respectfully represents unto your honor that heretofore, to wit, on the first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne as of fee, of, in, and to a certain tract or parcel of land, situated, lying, and being in the county of Harrison aforesaid, in the district aforesaid, between the Sabine and Red rivers, and south of Soda lake, and butted and bounded as follows, to wit: Beginning at a corner post from which a hickory, eighteen inches in diameter, bears south twenty-eight degrees west, two and three-fifths varas distant, and a pin oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence north five thousand varas, intersecting, at the distance of fourteen hundred varas, a ravine running east, and at three thousand two hundred varas, a creek also running east, to the second corner from which a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant, and an oak, fifteen inches in diameter, bears south fourteen

degrees east, four and a fifth varas distant; thence west fifteen thousand varas, intersecting, at the distance of twenty-four hundred varas, a creek running southeast, and at five thousand varas a ravine running northeast, and at six thousand varas a ravine also running northeast, and at twelve thousand two hundred varas, a creek also running northeast, to the third corner post, from which a black jack, fifteen inches in diameter, bears north four degrees east, five and two-fifths varas distant; thence south five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at three thousand four hundred varas a ravine also running east, to the fourth corner post, from which a black jack, twelve inches in diameter, bears north twenty-three degrees west, three and two-fifth varas distant, and another black jack, fourteen inches in diameter, bears south seventy-eight degrees east, five and two-fifths varas distant; thence east, to the first corner post, fifteen thousand varas, intersecting at the distance of six thousand seven hundred varas a ravine running southeast, at eleven thousand four hundred varas another ravine also running southeast, containing three leagues or seventy-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so seized, and then and there possessed of the same, the said Hiram Henley, then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said land and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain, that also, heretofore, to wit, on the said first day of June, A. D. 1849, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, also between the Sabine and Red rivers, and south of the Soda lake aforesaid, which is butted and bounded as follows, to wit: Beginning at a corner post, from which a red oak, eighteen inches in diameter, bears north forty-four degrees west, nine and three-fifths varas distant, and a hickory, ten inches in diameter, bears south eighty-four degrees east, six and three-fifths varas distant; thence north five thousand varas, intersecting at the distance of four hundred varas a creek, ten varas wide, running east, and at twelve hundred varas another creek, fifteen varas wide, running east, and at four thousand five hundred varas another creek, ten varas wide,

running east, to the second corner, a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, nine and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence west five thousand varas to the third corner, a post, from which a hickory, eighteen inches in diameter, bears north twenty degrees west, three varas distant; thence south five thousand varas, intersecting at one thousand varas a creek, ten varas wide, running east, and at fourteen hundred varas another creek, ten varas wide, also running east, at twenty-six hundred varas another creek, ten varas wide, also running east, and at four thousand three hundred varas a ravine running east to the fourth corner, a post, from which a hickory, fifteen inches in diameter, bears north fifteen degrees east, three varas distant, and another hickory, fifteen inches in diameter, bears south eighty-eight degrees east, sixteen varas distant; thence south five thousand varas to the first corner, intersecting at the distance of three thousand varas a creek, ten varas wide, running northeast, containing one league, or twenty-five millions square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging, or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said Hiram Henley, then and there, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, with force and arms, entered in and upon the said land, situated, butted, and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, so situated, butted, and bounded as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did, to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

And your petitioner would further represent unto your honor, and complain that, heretofore, to wit, on the said first day of June, A. D. 1849, at, to wit, in the district aforesaid, he was seized in his demesne, as of fee, of, in, and to another tract or parcel of land, situate, lying, and being in the said county of Harrison, in the district aforesaid, between the Sabine and Red rivers, south of Soda lake, and butted and bounded as follows, to wit:

Beginning at a post, from which a red oak, eighteen inches in diameter, bears south seventy-six degrees west, four and one-fifth varas distant, and a white oak, twelve inches in diameter, bears north seventy-six degrees east, fourteen varas distant; thence north five thousand varas, intersecting at the distance of one hundred varas a ravine running east, and at nineteen hundred varas a stream, ten varas wide, also running east, and at the distance of twenty-six hundred varas a ravine, running southeast to the second corner, a post, from which a

black jack, sixteen inches in diameter, bears south eighty-eight degrees west, four and four-fifths varas distant, and a hickory, fourteen inches in diameter, bears north forty-three degrees east, six varas distant; thence west five thousand varas to a post, the third corner, from which an oak, fifteen inches in diameter, bears south fourteen degrees east, four and one-fifth varas distant, and a hickory, fifteen inches in diameter, bears north seventy degrees west, eleven varas distant; thence south five thousand varas, intersecting at twenty-one hundred varas a ravine running east, to a post, the fourth and last corner, from which a hickory, eighteen inches in diameter, bears south, twenty-eight degrees west, two and three-fifths varas distant, and a red oak, twenty inches in diameter, bears north twenty degrees west, three varas distant; thence east five thousand varas to the first corner, containing one league, or twenty-five million square varas of land, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and being so thereof seized, and then and there possessed of the same, the said Hiram Henley then and there, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, with force and arms, entered in and upon the said lands, situated, butted and bounded as aforesaid, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and amoved your petitioner from the said lands and tenements, with the hereditaments and appurtenances, so situated as aforesaid, and from the possession, use, occupation, and enjoyment of the same, and kept and continued him so ejected, expelled, put out, and amoved for a long space of time, to wit, from thence hitherto, and other wrongs then and there did to the great damage of your petitioner; wherefore he says he is injured and hath sustained damage to the value of twenty thousand dollars.

The premises considered, your petitioner prays that process of citation issue to the marshal of the district aforesaid, commanding, &c., that the said Hiram Henley be made a defendant hereto, may appear and answer this petition; and that after due trial had by and before your honor, according to the rules of law, your petitioner may have judgment for such damages as he has sustained by reason of the premises, and for the recovery of the lands aforesaid, with the hereditaments and appurtenances aforesaid, for his costs about his suit in this behalf expended, with writ of possession upon recovery of said lands, &c., or that he may obtain such relief as he is entitled to; and your petitioner, as in duty bound, will ever pray, &c.

ROBERT HUGHES, *P. Q.*

And afterwards, to wit, on the 11th day of the month of July last aforesaid, the clerk of said court issued process of citation, in the words and figures following, to wit:

1352
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UNITED STATES DISTRICT COURT,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Hiram Henley, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of December next, to answer the petition and complaint of William Christy, in an action amounting to the sum of twenty thousand dollars, of which you will serve the defendant with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this eleventh day of [SEAL.] July, A. D. 1849, and seventy-fourth year of the independence of the United States.

JAMES LOVE, *Clerk.*

Which process of citation was returned by the marshal of said district with the following endorsement thereon, to wit:

Received 13th July, A. D. 1849, and executed 2d October, 1849, by serving the defendant in person with a true copy of this summons, and an attested copy of petition as furnished by the clerk of this court.

J. BATES,
U. S. marshal, district of Texas.

And afterwards, to wit, at a term of said court begun and held as aforesaid, on the first Monday in the month of December, in the year last aforesaid, and continued by adjournment to the 24th day of January, A. D. 1850, the following order was made herein, to wit:

By consent of the parties this cause is continued, and leave is given the defendant, until the first day of February next, to file his answer. And it is further agreed by the parties, that the surveyor of Harrison county shall go upon the land in controversy, upon a day to be designated by him, whereof twenty days' notice is to be given to the parties *parties* herein, and survey and lay out the same as either party shall require, and return a fair plat and report thereof to the next term of this court.

And afterwards, to wit, on the 4th day of February, in the year last aforesaid, the defendant, by his attorneys, Henderson, Hill, Frazier, and Shedd, came into said court and filed the defendant's answer in the words and figures following, to wit:

UNITED STATES OF AMERICA, *District of Texas.*

District court.

WILLIAM CHRISTY
vs.
HIRAM HENLEY

1. And now comes the defendant, by his attorneys, and in answer to the plaintiff's petition says he denies all and singular the allegations of the said petition, and prays that the plaintiff be held to strict proof of the same.

2. And as to the trespasses and ejectments, or either or any of them, complained of by plaintiff in his petition, the said defendant says he is not guilty, and puts himself upon the country.

3. And the defendant further answering says, that as to the pretended grant or title of said plaintiff to the land described in his petition, if any paper title he has, the same bears date the twentieth day of September, A. D. 1835, and was not made by any public officer, commissioner, or authority then, to wit, at the date of said pretended grant or title, being in the State of Coahuila and Texas competent to make the same.

4. And the defendant further says, that if any such grant or title was made as by said plaintiff is pretended, the same was made on the twentieth day of September, A. D. 1835, and the land described in said pretended grant or title, and in said petition, is and was at the date of said pretended grant situated in the twenty frontier leagues bordering upon the United States line, and said pretended grant was made without the approbation or assent of the executive of the national government of Mexico.

5. And the defendant further says, the plaintiff claims the land sued for, under and through a pretended grant from the government of the State of Coahuila and Texas made to one Miguel Arceniega, as a Mexican and purchaser, and purporting to have been procured for the said Arceniega by one William G. Logan, as his agent. And the defendant says, that the said pretended grant or title of the plaintiff to the land sued for is not valid in law, because the same was procured from the government aforesaid by fraud, in this, that thesaid Arceniega, and the said Logan, combined and confederated together for the purpose of evading the law, then in force, allowing the sale of lands to Mexicans, and them only; and falsely and fraudulently represented and stated to said government that the application by the said Arceniega for the said grant of land was really and bona fide made for him by the said Logan, and that the said Arceniega was to be the real purchaser of said land, and hold and enjoy the same as a Mexican citizen and purchaser; while, in truth, the said Arceniega fraudulently permitted the said Logan to use his name, and in his name procure the said grant solely for the use and benefit of him, the said Logan, who was not, at the time of procuring said grant, a Mexican citizen; and who, by the false and fraudulent practices aforesaid, procured the said grant and appropriated the land granted to his, the said Logan's, own use and benefit.

6. And the defendant says, that the plaintiff claims the land described in his petition by a pretended grant purporting to have been made by authority of the government of Coahuila and Texas to one Miguel Arceniega, bearing date, to wit, on the twentieth day of September, A. D. 1835; and that the said pretended grant was made upon the conditions that the said Arceniega, or the person or persons to

whom he might alienate the land in the said grant described, should cultivate the same within six years from the acquisition thereof by said pretended title, and pay for said land the price established by law. And the defendant says, that the said Arceniega, and those claiming said land under him, wholly failed to comply with said conditions.

7. And the defendant further says, that the plaintiff claims the land described in his petition under and through a pretended grant purporting to have been made to one Miguel Arceniega by authority of the government of the State of Coahuila and Texas, bearing date, to wit, the twentieth day of September, A. D. 1835, and under and through a pretended chain of transfers from said Arceniega to said plaintiff; and that within six years from the date of said pretended grant, and before the annexation of Texas to the United States, the said pretended transfers were made to said plaintiff; and the said plaintiff was not, at the date of said transfers to him, and previous thereto had never been, a resident or citizen of Texas, but was then, and thence hitherto has continued to be, a resident and citizen of the United States of America, owing and paying allegiance to the Government thereof.

8. And the defendant further says, that the land claimed by plaintiff in his petition is located within the territory designated as the twenty frontier leagues, bordering upon the United States of the North, in the act of congress of the Republic of Texas, approved January the 9th, A. D. 1841, entitled an act to quiet the land titles within the twenty frontier leagues bordering on the United States of the North, and is claimed by said plaintiff by virtue of said location made prior to the seventeenth day of March, A. D. 1836; and that the said plaintiff, and those through whom he claims the said land, did not commence an action to try the validity of said claim within twelve months from the passage of the act aforesaid.

9. And the said defendant says, that he claims the following tract or parcel of land containing 320 acres; situated in Harrison county, commencing on the west boundary line of Amy Dunnran's head-right league survey, at the place where the old road leading from Marshall to Shreveport, (being the road running by Major Mallory's homestead and plantation) crosses said west line of said survey; thence, north and and east for quantity: that said tract of land is a part of said head-right league survey, patented to the heirs of said Amy Dunran; the west half of which league has been duly and legally conveyed to Richard Hooper, under and through whom defendant claims said tract of 320 acres. That said patent to the heirs of said Dunnran, and the said conveyance by deed to said Hooper have been duly registered according to law, and the said Hooper and this defendant have had peaceable and adverse possession of said tract of land, cultivating, using, and enjoying the same, and paying tax thereon; claiming under said patent and deed of conveyance, for more than five years next before the commencement of this suit.

10. And the said defendant says, that he and those under whom he claims, have had peaceable and adverse possession of said tract of 320 acres of land under and by virtue of said patent, and a regular chain

of transfer from the government of Texas, for more than three years next, before the commencement of this suit. And the defendant disclaims ownership and possession of any portion of the land described in plaintiff's petition, not included in the metes and bounds of the said tract of 320 acres of land.

And the said defendant suggests to the court that he and those under whom he claims, have had adverse possession in good faith of the said tract of 320 acres of land for more than one year next before the commencement of this suit, and that, during his and their possession have made permanent and valuable improvements in the same, consisting of, to wit, one hundred and fifty acres cleared and fenced, and of divers dwelling-houses, barns, stables, out-houses, and orchards, &c., of great value, to wit, of the value of two thousand dollars.

HENDERSON, HILL,
FRAZIER & SHEDD,
Att'ys for defendant.

And afterwards, to wit, on the 12th day of April, in the year last aforesaid, the plaintiff, by his attorney aforesaid, filed his replication and demurrers to the pleas in the defendant's answer contained, in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, April term, 1850.

WILLIAM CHRISTY
vs.
HIRAM HENLEY. } 177—Trespass.

Similiter to 2d plea.

2. And the plaintiff, by his attorney comes, and as to the plea by the defendant secondly in his answer herein pleaded, whereof said defendant puts himself upon the country, he, the said plaintiff, doth the like.

Replication to 3d plea.

3. And for replication to the third plea by the said defendant in his answer pleaded, the said plaintiff, by his attorney, comes and says, precludi non, because he says the grant under which he, said plaintiff, claims, was made by an authority, at the date of said grant, in the State of Coahuila and Texas, existing and competent to make the same; and this he prays may be inquired of by the country.

Demurrer [to 4th plea.]

4. And the said plaintiff, by attorney, comes and says, precludi non; by reason of anything in the defendant's fourth plea pleaded,

because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said plea in bar of the plaintiff's action attempts to set up the want of the approbation or assent of the executive of the national government of Mexico to the issuance of a grant within the twenty border leagues, when the national colonization law, under which is sought the benefit of this bar, contains no prohibition to the issuance of such grant, within said border leagues, without the consent of said executive of Mexico; but if at the time of the issuance of said grant there was any such prohibition, it extended only to making settlements within the said border leagues.

2. The said plea in bar of plaintiff's cause of action attempts to set up the issuance of a grant under which the plaintiff claims, dated the 20th day of September, 1835, without the approbation of the supreme executive of Mexico within the border leagues, but does not shew the nature or kind of said grant so as to enable the court to judge of its validity.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

Replication to 5th plea.

5. And for replication to the fifth plea by the said defendant in his said answer pleaded the said plaintiff says, precludi non, because he says the grant under which he claims was not obtained or procured to be issued by fraudulent misrepresentations as in said plea is alleged, and this he prays may be inquired of by the country.

Demurrer [to 6th plea.]

6. And as to the sixth plea by the said defendant in his said answer pleaded the said plaintiff, by attorney, says, precludi non, because he says the said plea and the matters and things therein contained are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The failure to perform the conditions set forth in said plea might have been cause of the forfeiture of the estate passed by said grant in said plea set out on a proceeding in behalf of the State, but is no reason why the defendant before forfeiture declared should, against plaintiff, retain possession of the estate in said grant mentioned.

2. The conditions set forth in said plea, as those upon which said grant was issued, as is manifest by said plea, were conditions subsequent of which the defendant cannot take advantage upon failure in their performance.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

Demurrer [*to 7th plea.*]

7. And as to the seventh plea by the said defendant in his said answer pleaded said plaintiff, by attorney, says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, viz:

1. The said plea in bar avers, that the estate in the premises, in the said plaintiff's petition mentioned, was transferred to the said plaintiff, while and during the time he was a citizen of the United States of America, *a citizen of the United States of America*, and owing allegiance to the same, and an alien to the Republic of Texas; yet shews no forfeiture on office found, so as to divest the estate vested by said transfer.

2. And the said plea is in other respects defective, informal, and insufficient, &c.

Demurrer [*to 8th plea.*]

8. And as to the eighth plea by the said defendant in his said answer pleaded, said plaintiff says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude the said plaintiff from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said act of the congress of the Republic of Texas, referred to in said plea, was made and intended to impair the obligations of contracts.

2. The said act of congress of the Republic of Texas, at the time of the approval thereof, since and now, was not and is not the law of the land.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

Demurrer [*to 9th plea.*]

9. And as to the ninth plea by the said defendant in his said an-

swer pleaded said plaintiff, by attorney, says, precludi non, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shews the following, to wit:

1. The said defendant by his said plea insists upon a bar by and under the provisions of the 16th section of an act entitled "an act of limitations," approved February 5th, 1841, yet sets out no claim under a deed to him, but only avers a deed to a certain Richard Hooper.

2. The said defendant, though asking the bar provided by the 16th section of said action, does not, by his said plea, attempt to set up five years' adverse possession of the land in said plea described by himself, but insists upon such adverse possession by himself and another for five years.

3. And the said plea is in other respects defective, informal, and insufficient, &c.

[*Demurrer to* 10*th plea.*]

And as to the tenth plea by the said defendant in his said answer pleaded, said plaintiff says, precludi non, because he says that, heretofore, to wit, on the day of , at the district aforesaid, and within three years next before the commencement of his action herein, he had cause and right and title to enter in and upon, and take possession of, the lands and tenements with the hereditaments and appurtenances in his petition described; and he did then and there, to wit, on the day and year aforesaid, at the district aforesaid, and within three years next before the commencement of this action, make entry *make entry* in and upon, and take possession of, the said lands and tenements, with the hereditaments and appurtenances thereto belonging, and was then and there lawfully seized and possessed of the said lands and tenements, with the hereditaments and appurtenances, under and by virtue of the said entry as aforesaid; and being so lawfully seized and possessed of the said lands and tenements, with the hereditaments and appurtenances thereunto belonging, the said defendant, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, and within three years next before the commencement of the action herein, with force and arms, entered in and upon the said lands and tenements, with the hereditaments and appurtenances thereto belonging, as aforesaid, and then and there ejected, expelled, put out, and amoved the said plaintiff therefrom, and kept and continued him, said plaintiff, so ejected, expelled, put out, and amoved, to the great damage of the said plaintiff, which trespasses are the same which in the petition herein are set out, and whereof complaint is made; without this, that the said defendant had or held peaceable and adverse possession of the land in his said

plea described, under title, for more than three years before the commencement of this action, as in said plea alleged, and this he is ready to verify; wherefore he prays judgment, &c.

ROB. HUGHES,
For plaintiff.

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of May, in the year last aforesaid, this case was continued until next term.

And afterwards, to wit, at a term of said court, begun and held as aforesaid, on the first Monday in the month of December, in the year last aforesaid, this case was continued until next term.

And afterwards, to wit, on the 8th day of July, A. D. 1851, the following order was made herein, to wit:

On motion of plaintiff's attorney, by leave of the court, he withdrew his replication to the tenth plea of defendant pleaded in his defence; and by leave of the court filed a demurrer to the said tenth plea, and additional causes of demurrer to the ninth plea of defendant pleaded in his defence.

And thereupon, on the aforesaid day, the said plaintiff, by his attorney, filed his withdrawal of replication to, and demurrer to 10th plea, and also additional causes of demurrer to 9th plea, which are in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court, December term, 1851.

WILLIAM CHRISTY
vs.
HIRAM HENLEY. } 177.—In trespass.

And now, at this term, the plaintiff, by attorney, by leave of the court first had and obtained, files the following additional causes of demurrer to the ninth plea by the defendant in this behalf pleaded, to wit:

1st. The said defendant, by his said ninth plea, does not aver, that he, said defendant, was ever an actual settler upon the said land of which by his said plea he claims to be in the adverse possession.

2d. Though the said defendant by his said plea attempts to set up in bar an adverse possession under deed for five years next before the commencement of plaintiff's action herein, yet he does not show that said deed was duly proven and recorded.

3d. The said defendant by his said plea attempts to set up, in bar of plaintiff's action, an adverse possession under deed, paying taxes for five years next before commencement of said plaintiff's action, when by the purview of the statutes in such case made and provided there can be no such bar; but if any, the bar must be by such adverse possession under such deed for five years next after cause of action accrued and before commencement of action.

4. The said ninth plea, though in bar, does not name any case by which the plaintiff is barred of his action, by reason of any possession adverse within the terms of the statute in such case made and provided, &c.

And by further leave had and obtained of the court, the said plaintiff withdraws his replication filed herein to the tenth plea by the defendant in this behalf pleaded, and says, precludi non, by reason of any thing in said plea, because he says the said plea, and the matters and things therein contained, are not sufficient in law to bar and preclude him from having and maintaining his action aforesaid, and this he is ready to verify; wherefore he prays judgment, &c.

And for cause of demurrer, according to the form of the statute in such case made and provided, the said plaintiff sets down and shows the following, to wit:

1. The said plea of the said defendant attempts to set up adverse possession of the land in the said plea set out under title for more than three years next before the commencement of action herein by said defendant, and those under whom he claims; when the statutes, the benefit of which he seeks by said plea, requires the possession to be in the defendant only, unconnected with others.

2nd. The said plea though in bar, does not make any case by which the plaintiff is barred of his action, by reason of any possession adverse, within the terms of the statute in such case made and provided.

3rd. The said defendant by his said plea does not show, that he, said defendant, was ever an actual settler upon the said land of which by his said plea he claims to be in the adverse possession.

4th. The said defendant, by his said plea, does not aver that the adverse possession which he pleads in bar of plaintiff's action was under title, duly proven and recorded.

5th. The said defendant by his said plea attempts to set up in bar of plaintiff's action an adverse possession, under title, for three years next before the commencement of action; when by the perview of the statutes in such case made and provided, there can be no such bar: but if any, the bar must be by such adverse possession, under such title, for three years next after cause of action accrued, and before commencement of action.

6th. And the said plea is in other respects defective, informal, and insufficient, &c.

ROB. HUGHES,
For plaintiff.

And now, at this day, to wit, on the 9th day of July, A. D. 1851, being a day in the term first hereinbefore mentioned, the following judgment was rendered, to wit:

This day came the parties aforesaid by their attorneys, and the questions of law arising upon the demurrers of the plaintiff to the fourth, sixth, seventh, eighth, ninth, and tenth pleas by the defendant in his answer

pleaded, having been argued and submitted, because it seems to the court that the law is for the defendant; it is therefore considered by the court that the said demurrers be overruled; and the plaintiff, by his attorney, stating that he intended to abide by his demurrers, it is therefore considered by the court, that the defendant go hence without day, and that he recover of the plaintiff his costs by him about his defence in this behalf expended, to be taxed by the clerk, &c.

And thereupon, on the 16th day of the said month of July, A. D. 1851, aforesaid, the plaintiff by his attorney aforesaid came into the clerk's office of the said court, and assigned error in the record and proceedings, and giving the judgment aforesaid, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Texas, to wit:

District court.

WILLIAM CHRISTY, plaintiff,
vs.
HIRAM HENLEY, defendant. } 177—Trespass.

And now, on this 16th day of July, A. D. 1851, comes the plaintiff aforesaid by his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit:

1st. The defendant's fourth plea by him in his answer pleaded attempts to set up in bar of plaintiff's action the issuance of the grant under which the plaintiff claims, without the approbation of the executive of the Republic of Mexico, when by the law of the State of Coahuila and Texas, under which said grant was issued, there was no prohibition to the issuance of said grant, without such approbation, and the said fact pleaded is no bar; yet the said court overruled the plaintiff's demurrer to said plea, when said demurrer according to the rules of law, should have been sustained.

2d. The said defendant by his sixth plea in his said answer contained, attempts to set up in bar of said plaintiff's action aforesaid the non-performance of conditions subsequent to which the grant under which the plaintiff claims by the law of the State of Coahuila and Texas, as it was at the date of said grant, was subject, without showing a re-entry or other mode of enforcing a forfeiture of the estate conveyed or passed by said grant, or revesture of the same in the said State of Coahuila and Texas, or in the Republic or State of Texas; yet the court, by overruling the demurrer to said pleas, allowed a bar by reason of the non-performance of said conditions in favor of a third party, not the grantor; when, according to the rules of law, said demurrer should have been sustained.

3d. The said defendant by his seventh plea in his said answer pleaded attempt to set up in bar of plaintiff's action the fact that the lands claimed and sued for by the plaintiff in his petition described, were sold and transferred to the said plaintiff, while and during the time he was

a citizen of the United States of America, owing allegiance to the same, and an alien to the Republic of Texas, without showing any office found or forfeiture declared, in any manner whatever; yet the court overruled the plaintiff's demurrer to said plea, when, according to the rules of law, the same should have been sustained.

4th. The said defendant, by his eighth plea in his said answer contained attempts to set up in bar of plaintiff's action the failure to commence action within twelve months after the passage of an act by the Congress of the Republic of Texas, entitled "an act to quiet land titles within the twenty frontier leagues bordering on the United States of the North," to try the validity of the grant under which plaintiff claims; when it is apparent that said grant, under which said plaintiff claims, was a perfect and not an imperfect title, issued by the State of Coahuila and Texas, and as to which the government of the Republic of Texas had no legitimate power or authority to require or prescribe the commencement of any suit, in the form and manner the same was prescribed, to try the validity of the title vested by said grant, or create a bar, in consequence of a failure to commence such suit; yet the demurrer to said plea was overruled by the court, when the same, according to the rules of law, should have been sustained.

5th. The said defendant, by his ninth plea in his said answer pleaded, insists upon a bar, by and under the provisions of the 16th section of an act of the Congress of the Republic of Texas, entitled "an act of limitations," approved February 5th, 1841, but shows no claim, under deed duly proven and recorded, to him for said land, with continuous adverse possession by himself, for the term prescribed by law, after cause of action accrued, and before action brought, as by law required; yet the court overruled the plaintiff's demurrer to said plea, when, by the rules of law, the same should have been sustained.

6th. The said defendant, by his tenth plea in his said answer pleaded, insists upon a bar by and under the fifteenth section of an act of the congress of the Republic of Texas, entitled "an act of limitations," approved February 5th, 1841, but by said plea does not show or allege that he was a settler on the land in question, having had and held continuous adverse possession of the same, under title duly proven and recorded, or under color of title, for three years next after cause of action accrued, and before action brought, as by the rules of law he should have done; yet the said court overruled the plaintiff's demurrer to said plea, when, according to the rules of law, the same should have been sustained.

And the said plaintiff prays a writ of error, to be directed, &c., and that the judgment aforesaid, for the errors aforesaid, and for other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, &c.

ROB'T HUGHES,
For plaintiff.

And afterwards, to wit, on the 19th day of the month of July last aforesaid, the said plaintiff gave bond, with security, in the words and figures following, to wit:

WILLIAM CHRISTY
vs.
HIRAM HENLEY. } In error.

Know all men by these presents, that we, William Christy, of Louisiana, and Robert Hughes, of the city of Galveston, in the State of Texas, are held and firmly bound unto the above named Hiram Henley, in the sum of two hundred dollars, to be paid to the said Hiram Henley, his executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, our heirs, executors, and administrators, and each of them, firmly by these presents. Sealed with our seals, and dated this 19th day of July, A. D. 1851.

Whereas the above named William Christy hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause, by the district court of the United States for the district of Texas:

Now, therefore, the condition of this obligation is such, that if the above named William Christy shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WILLIAM CHRISTY, [SEAL.]
By his attorney ROB. HUGHES,
ROB. HUGHES. [SEAL.]

Sealed and delivered in presence of, and approved by—
JOHN C. WATROUS.

Whereupon writ of error was issued in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court of the United States, for the district of Texas, before you, between William Christy and Hiram Henley, a manifest error hath happened to the great damage of the said William Christy, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf, you are hereby commanded, if judgment be therein given, then under seal, distinctly and openly, you send the record and proceedings afore-

said, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct the error, what of right and according to law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this sixteenth day of [SEAL.] July, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

WILLIAM CHRISTY
vs.
HIRAM HENLEY.

I, James Love, clerk of the district court of the United States, for the district of Texas, certify, that the foregoing is a true copy of the record and all the proceedings had in above entitled cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, this thirteenth day of September, in the [SEAL.] year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-sixth.

JAMES LOVE, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States, for the district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court of the United States, for the district of Texas, before you, between William Christy and Hiram Henley, a manifest error hath happened to the great damage of the said William Christy, as by his complaint appears; and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf, you are hereby commanded, if judgment be therein given, then under seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at [the city of] Washington, on the first Monday in December next, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause